

Market Contract Terms & Conditions.

1. Background

This contract is between:

ERM Power Retail Pty Ltd ABN 87 126 175 460 who sells electricity to you at your premises (referred to as “we”, “our” or “us”); and

You, the customer to whom the contract applies (referred to as “you” or “your”).

2. Credit Assessment

You consent to us undertaking a credit assessment of you from time to time. This includes us obtaining credit reports and other information from a credit reporting agency containing personal credit information about you.

You also consent to us using information concerning your commercial activities or commercial creditworthiness and providing to a credit reporting agency your personal information relating to credit, including information relating to late or dishonoured payments and the fact that you are our customer.

3. What Is The Term Of This Contract?

3.1 When does this contract start?

- (a) This contract starts when you accept our offer to sell electricity to you at your premises (verbally or electronically). The terms of our offer also form part of this contract.
- (b) Our obligation to sell electricity to you starts when we first become liable for the consumption of electricity at your premises under the electricity market rules. This will normally be the date of the first meter read after the expiry of the cooling off period. The reading of the meter may incur a special meter read fee.
- (c) By entering into this contract, you are taken to have given us notice that you wish to end any other agreement you may have for the sale of electricity at your premises.

3.2 Cooling-off

- (a) You can withdraw from this contract without penalty within the cooling-off period, even if you have agreed to or accepted this contract.
- (b) You can withdraw by informing us of your intention to withdraw during the cooling-off period, which you can do orally or in writing (either by email, fax, letter or by using the cancellation form provided with this contract).
- (c) The cooling-off period is the period of 10 business days after the date you receive all required disclosure information from us.

3.3 Final decisions we may make before we start selling you electricity

- (a) If at any time before we start selling electricity to you we decide that we are not satisfied with information you have provided to us about your eligibility for our offer or about your creditworthiness, then we may immediately terminate this contract by giving notice to you.

- (b) We will not have to provide any compensation to you, nor will you to us.
- (c) Without limiting paragraph (a), our offer does not apply to residential premises or customers and we can terminate this contract if the premises are used for residential purposes.

3.4 When does this contract end?

- (a) Unless it is terminated earlier under clauses 3.5, 5.2, 13 or 19, this contract will continue until the end date stated in our offer. However, there is no end date for our adjustable rate offer, and the contract for an adjustable rate offer will continue until terminated by you or us.
- (b) We will send you a notice that the term of the contract is due to end. The notice must be given no earlier than 40 business days and no later than 20 business days before the end of the contract.
- (c) If the term of this contract expires without any agreed extension, then our relevant standing tariff will apply.

3.5 Termination

- (a) This contract ends:
 - (i) if you give us at least 10 business days’ notice stating that you wish to end the contract — at the end of the notice period;
 - (ii) if we both agree to a date to end the contract — on the date that is agreed;
 - (iii) if you start to buy electricity for the premises from us or a different retailer under another contract — on the date the other contract with us starts, or the date that your transfer to another retailer takes effect;
 - (iv) if a different customer starts to buy electricity for the premises — on the date that customer’s contract starts; or
 - (v) if the premises are disconnected and you have not met the requirements for reconnection — 10 business days from the date of disconnection.
- (b) If you do not give us safe and unhindered access to the premises to conduct a final meter reading (where relevant) and, if required by us, to disconnect supply of electricity to the premises, this contract will not end under paragraph (a) until we have issued you a final bill and you have paid any outstanding amount for the sale of electricity.
- (c) Rights and obligations accrued before the end of this contract continue, including any obligations to pay amounts to us.

3.6 Vacating your premises

- (a) If you are vacating your premises, you must give us notice of the date on which you intend to vacate, or did vacate and a forwarding address for your final bill.

- (b) When we receive the notice, we must use our best endeavours to arrange for the reading of the meter on the date specified in your notice (or as soon as possible after that date if you do not provide access to your meter on that date) and send a final bill to you at the forwarding address stated in your notice. The reading of the meter may incur a special meter read fee.
- (c) You will continue to be responsible for charges for the premises until your contract ends in accordance with clause 3.5 of this contract.
- (d) If you vacate the premises, we may arrange for the supply of electricity to be disconnected and may pass on to you any disconnection charges.

4. Scope Of This Contract

4.1 What is covered by this contract?

- (a) Under this contract we agree to sell you electricity at your premises. We also agree to meet other obligations set out in this contract and to comply with the electricity laws.
- (b) In return, you agree:
 - (i) to be responsible for charges for electricity supplied to the premises until this contract ends, even if you vacate the premises earlier;
 - (ii) to pay the amounts billed by us under the contract; and
 - (iii) to meet your obligations under the contract and the electricity laws.

4.2 What is not covered by this contract?

This contract does not cover the physical connection of your premises to the distribution system, including metering equipment and the maintenance of that connection and the supply of electricity to your premises. This is the role of your distributor.

5. Your General Obligations

5.1 Full information

You must give us any information we reasonably require for the purposes of the contract. The information must be correct, and you must not mislead or deceive us in relation to any information provided to us.

5.2 Incorrect information

If you mislead or deceive us in relation to any information provided to us, or if any of the information you provide to us is incorrect, then we may recover from you any cost we incur or loss we suffer as a result. We may also immediately terminate this contract by giving notice to you.

5.3 Updating information

- (a) You must tell us promptly if information you have provided to us changes, including if your billing address changes or if your use of electricity changes.
- (b) You must also tell us promptly if you change any electrical installations or equipment at the premises, including if you install or change any solar panels.

5.4 Life support equipment

- (a) If a person living at your premises requires life support equipment, you must register the premises with us. To register, you will need to provide written confirmation from a registered medical practitioner of the requirement for life support equipment at the premises.
- (b) You must tell us or your distributor if the life support equipment is no longer required at the premises.

5.5 Obligations if you are not an owner

If you cannot meet an obligation relating to the premises under the contract because you are not the owner, you will not be in breach of the obligation if you take all reasonable steps to ensure that the owner or other person responsible for the premises fulfils the obligation.

6. Our Liability

- (a) The quality and reliability of your electricity supply is subject to a variety of factors that are beyond our control as your retailer, including accidents, emergencies, weather conditions, vandalism, system demand, the technical limitations of the distribution system and the acts of other persons (such as your distributor), including at the direction of a relevant authority.
- (b) To the extent permitted by law, we give no condition, warranty or undertaking, and we make no representation to you, about the condition or suitability of electricity, its quality, fitness for purpose or safety, other than those set out in this contract.
- (c) Unless we have acted in bad faith or negligently, we are not liable for any loss or damage you suffer as a result of the total or partial failure to supply electricity to your premises, which includes any loss or damage you suffer as a result of the defective supply of electricity.

7. Price For Electricity And Other Service

7.1 What are our tariffs and charges?

Our tariffs and charges for the sale of electricity to you under this contract are set out in our offer.

7.2 GST

- (a) Amounts payable by you may be stated to be exclusive or inclusive of GST. Paragraph (b) applies unless an amount is stated to include GST.
- (b) Where an amount paid by you under this contract is payment for a "taxable supply" as defined for GST purposes, to the extent permitted by law, that payment will be increased so that the cost of the GST payable on the taxable supply is passed on to the recipient of that taxable supply.

7.3 Changes in tariffs

- (a) Subject to paragraphs (b) and (d) and clause 7.4, our tariffs and charges do not change during the term of our offer, even if a new law is passed or an existing law is changed or repealed.
- (b) Subject to clause 7.4, if you have chosen an adjustable rate offer, we may change the tariffs and charges from time to time (but not more frequently than once in a calendar year) by notice to you. The notice may be on a bill and given no later than the next bill after the change.

- (c) If the premises are in Queensland, the notice in paragraph (b) will be given, in the case of an increase in tariffs, at least 10 business days before the change applies, or otherwise no later than your next bill.
- (d) Your entitlement to a solar rebate or payment is subject to you meeting the relevant eligibility requirements. If you have a solar installation and you make a change to it, this may impact on your eligibility to receive the solar rebate or payment.

7.4 Tariff reassignment and meter changes

- (a) The structure or nature of your tariff may be varied, or you may be placed on a different tariff from time to time if:
 - (i) your network tariff classification is determined by your distributor to be incorrect;
 - (ii) a solar installation is installed at the premises;
 - (iii) there is any other change to your use of energy that results in you no longer being eligible for the previous tariff; or
 - (iv) there is any other change that your distributor considers requires a different network tariff to be used.
- (b) If your meter type at the premises is changed, we may change your charges to reflect any change in the costs we incur as a result of the meter change.
- (c) You consent to the variation of the structure or nature of your tariff or a change to your charges in the circumstances described in clause 7.4(a) and 7.4(b) above.
- (d) We will provide notice to you of any changes to the structure or nature of your tariff or a change to your charges. This notice may be on a bill. The changes may take effect from the date of occurrence of the relevant event described in clauses 7.4(a) and 7.4(b).

8. Billing

8.1 General

- (a) We will send a bill to you as soon as possible after the end of each billing cycle.
- (b) If you have a remotely read meter, your billing cycle will be monthly. Otherwise, your billing cycle will match the frequency of your manual meter reads, which will be either monthly or quarterly.
- (c) We will send bills to your nominated email address. If you require a hard copy bill, we will send it to your nominated address but there may be an extra charge as set out in our offer.
- (d) If you request, we must review a bill in accordance with our standard complaints and dispute resolution procedures.

8.2 Calculating the bill

- (a) Bills will be calculated on:
 - (i) the amount of electricity consumed at your premises during the billing cycle (using information obtained from reading your meter or otherwise in accordance with relevant metering rules);

- (ii) the amount of fees and charges for any other services provided under this contract during the billing cycle; and
 - (iii) the charges payable for services provided by your distributor, including connection charges if you have asked for a new connection or connection alteration and have not made alternative arrangements with your distributor.
- (b) Bills may also include previously unbilled charges and adjustments in respect of previous billing cycles.

8.3 Estimating the electricity usage

- (a) We may estimate the amount of electricity consumed at your premises if your meter cannot be read, if your metering data is not obtained (for example, if access to the meter is not given or the meter breaks down or is faulty), or if you otherwise consent.
- (b) If we estimate the amount of electricity consumed at your premises to calculate a bill, we must:
 - (i) clearly state on the bill that it is based on an estimation; and
 - (ii) when your meter is later read, adjust your bill for the difference between the estimate and the energy actually used.
- (c) If the later meter read shows that you have been undercharged, we will allow you to pay the undercharged amount in instalments, over the same period of time during which the meter was not read (if less than 12 months), or otherwise 12 months.
- (d) If the meter has not been read due to your actions, and you request us to replace the estimated bill with a bill based on an actual reading of the meter, we will comply with your request but may charge you any cost we incur in doing so.

8.4 Your historical billing information

Upon request, we must give you information about your billing history for the previous 2 years free of charge. However, we may charge you if we have already given you this information in the previous 12 months, or if you require information going back more than 2 years.

9. Paying Your Bill

9.1 What you have to pay

You must pay to us the amount shown on each bill by the date for payment (the due by date) on the bill, without set-off or counterclaim. The due-by date will be 14 calendar days from the date on which we issue your bill. You have the option to pay a bill in advance.

9.2 Issue of reminder notices

If you have not paid your bill by the due by date, we will send you a reminder notice that payment is required. The reminder notice will give you a further due date for payment which will be not less than 6 business days after we issue the notice.

9.3 Difficulties in paying

If you have difficulties paying your bill, you should contact us as soon as possible. We will provide you with information about payment options.

9.4 Interest

If you are late in payment, we may charge you interest on the outstanding amount at the default interest rate.

9.5 Other Costs

If we incur any legal or other costs in recovering outstanding amounts from you, we may pass those costs on to you. We may also pass on to you any disconnection charges if your premises are disconnected.

10. Meters

- (a) You must allow safe and unhindered access to your premises for the purposes of reading and maintaining the meters (where relevant).
- (b) You must not tamper with, or permit tampering with, any meters or associated equipment.
- (c) We will use our best endeavours to ensure that a meter reading is carried out as frequently as is needed to prepare your bills, consistently with the metering rules and in any event at least once every 12 months.

11. Undercharging And Overcharging

11.1 Undercharging

- (a) If we have undercharged you, we may recover the undercharged amount from you. If we recover an undercharged amount from you:
 - (i) we will not charge interest on the undercharged amount; and
 - (ii) we will offer you time to pay the undercharged amount in instalments over the same period of time during which you were undercharged (if less than 12 months), or otherwise 12 months.
- (b) The maximum amount we can recover from you is limited to the amount that has been undercharged in the 9 months immediately before we notify you, unless the undercharge is your fault, or results from your unlawful act or omission.

11.2 Overcharging

- (a) Where you have been overcharged by less than the relevant overcharge threshold under the energy laws, and you have already paid the overcharged amount, we must credit that amount to your next bill.
- (b) Where you have been overcharged by the relevant overcharge threshold or more, we must inform you within 10 business days of our becoming aware of the overcharge and, if you have already paid that amount, we must credit that amount to your next bill. However, if you request otherwise, we will comply with that request.
- (c) If you have stopped buying electricity from us, we will use our best endeavours to pay the overcharged amount to you within 10 business days.
- (d) If you have been overcharged as a result of your own fault or unlawful act or omission, we may limit the amount we credit or pay you to the amount you were overcharged in the last 12 months.

11.3 Reviewing your bill

- (a) If you disagree with the amount you have been charged, you can ask us to review your bill in accordance with our standard complaints and dispute resolution procedures.
- (b) If you ask us to, we must arrange for a check of the meter reading or metering data or for a test of the meter in reviewing the bill. You will be liable for the cost of the check or test and we may request payment in advance. However, if the meter or metering data proves to be faulty or incorrect, we will not charge you for the meter test or must reimburse you for any amount paid in advance.
- (c) If your bill is being reviewed, you are still required to pay any other bills from us that are due for payment and the lesser of:
 - (i) the portion of the bill that you do not dispute; or
 - (ii) an amount equal to the average of your bills in the last 12 months.

12. Disconnection Of Supply

12.1 When can we arrange for disconnection?

Subject to all relevant regulatory requirements, we may arrange for the supply of electricity to your premises to be disconnected if:

- (a) you do not pay your bill by the pay-by date;
- (b) you do not give access to your premises to read a meter (where relevant) for 3 consecutive meter reads; or
- (c) we are otherwise entitled or required to do so by law.

12.2 Remote disconnection

If you have a remotely read meter, disconnection of the supply of electricity to your premises may occur remotely.

12.3 Notice and warning of disconnection

Before arranging for your premises to be disconnected, we must comply with relevant warning notice requirements and other provisions in any relevant laws that govern this contract.

12.4 When we must not arrange disconnection

- (a) Unless you have requested to be disconnected during these times, we must not arrange for your premises to be disconnected during the following times:
 - (i) on a business day before 8.00am or after 3.00pm;
 - (ii) on a Friday or the day before a public holiday;
 - (iii) on a weekend or a public holiday;
 - (iv) on the days between 20 December and 31 December (both inclusive) in any year; or
 - (v) if you are being disconnected under clause 12.1(a), during an extreme weather event.
- (b) Your premises may also be disconnected by the distributor at any time for other reasons, including:
 - (i) for reasons of health and safety;
 - (ii) in an emergency;
 - (iii) as directed by a relevant authority; or
 - (iv) where you interfere or allow interference with any energy equipment that is at your premises except as may be permitted by law;

- (v) if there has been illegal or fraudulent use of electricity at your premises; or
- (vi) where you use the energy supplied to your premises or any energy equipment in a manner that unreasonably interferes with the connection or supply of energy to another customer or causes damage or interference to any third party.

13. Reconnection After Disconnection

- (a) We must request your distributor to reconnect your premises if, within 10 business days of your premises being disconnected:
 - (i) you ask us to arrange for reconnection of your premises; and
 - (ii) you rectify the matter that led to the disconnection; and
 - (iii) you pay any reconnection charge (if requested).
- (b) We may terminate this contract 10 business days following disconnection if you do not meet the requirements in paragraph (a).
- (c) If you have a remotely read meter, reconnection of the supply of electricity to your premises may occur remotely.

14. Notices And Bills

- (a) Notices and bills under this contract may be sent by email or other electronic means.
- (b) Our contact details for you to contact us or send us a notice are as set out in our bill to you, or as notified to you from time to time.
- (c) A notice or bill sent under this contract is taken to have been received by you or by us (as relevant):
 - (i) on the date it is handed to the party, left at the party's premises (in your case) or one of our offices (in our case) or successfully faxed to the party (which occurs when the sender receives a transmission report to that effect); or
 - (ii) on the date 2 business days after it is posted; or
 - (iii) on the date of transmission (unless the sender receives notice that delivery did not occur or has been delayed) if sent electronically.

15. Privacy Act Notice

We will comply with all relevant privacy legislation in relation to your personal information. You can find our privacy policy on our website. If you have any questions, you can contact our privacy officer.

16. Complaints And Dispute Resolution

16.1 Complaints

- (a) If you have a query, complaint or dispute relating to the sale of electricity by us to you, or this contract generally, you may contact us and lodge a complaint with us in accordance with our standard complaints and dispute resolution procedures.
- (b) Our contact details are as follows:

Call us:	134 376
Send us an email:	service@ermpower.com.au
Visit us on the web:	www.ermpower.com.au

Write to us at:
ERM Business Energy
Customer Advocacy
PO Box 18042
Collins St East VIC 8003

- (c) Our standard complaints and dispute resolution procedures can be found on our website, or provided to you on request.

16.2 Our obligations in handling complaints

- (a) If you make a complaint, we must handle the complaint in accordance with our standard complaints and dispute resolution procedures and inform you of the outcome of your complaint and the reasons for our decision.
- (b) If you are not satisfied with our response, you have a right to refer the complaint to the energy ombudsman in the State or Territory in which the premises are located.
- (c) Contact details for the energy ombudsman are shown in our standard complaints and dispute resolution procedures published on our website.

17. Force Majeure

17.1 Effect of force majeure event

If either party to this contract cannot meet an obligation under this contract because of an event outside the control of that party (a 'force majeure event'):

- (a) the obligation, other than an obligation to pay money, is suspended to the extent it is affected by the force majeure event for as long as the force majeure event continues; and
- (b) the affected party must use its best endeavours to give the other party prompt notice of that fact including full particulars of the event, an estimate of its likely duration, the extent to which the affected party's obligations are affected and the steps being taken to remove, overcome or minimise those effects.

17.2 Deemed prompt notice

If the effects of a force majeure event are widespread, we will be deemed to have given you prompt notice if we make the necessary information available by way of a 24 hour telephone service within 30 minutes of being advised of the event or otherwise as soon as practicable.

17.3 Obligation to overcome or minimise effect of force majeure event

A party that claims a force majeure event must use its best endeavours to remove, overcome or minimise the effects of that event as soon as practicable.

1.1 Settlement of industrial disputes

Nothing in this clause requires a party to settle an industrial dispute that constitutes a force majeure event in any manner other than the manner preferred by that party.

18. Applicable Law

The laws of the State or Territory where your premises are located govern this contract.

19. Retailer Of Last Resort Event

If we are no longer entitled by law to sell electricity to you due to a retailer of last resort event occurring in relation to us, we will provide all relevant information (including your name, billing address and metering identifier) to the entity appointed as the relevant designated retailer for the event and this contract will come to an end. You will automatically become party to a new electricity retail contract with the designated retailer.

20. Act Premises

If the premises are in the Australian Capital Territory, we must comply with all applicable Minimum Service Standards in Schedule 1 of the Consumer Protection Code and you are entitled to a rebate under the Code if we fail to meet any applicable Minimum Service Standards. You may apply for a rebate by contacting us within 3 months of the incidence of non-compliance. Our contact details are set out in clause 16.

21. General

21.1 Other provisions

- (a) If a party to this contract is made up of more than one person, or a term is used in this contract to refer to more than one party:
 - (i) an obligation of those persons is joint and several;
 - (ii) a right of those persons is held by each of them severally; and
 - (iii) any other reference to that party or that term is a reference to each of those persons separately, so that (for example) an undertaking is given by each of them separately.
- (b) Any provision of this contract that is unenforceable or partly unenforceable is, where possible, severed to the extent necessary to make this contract enforceable.
- (c) The following rules also apply in interpreting this contract, except where the context makes it clear that a rule is not intended to apply:
 - (i) a singular word includes the plural, and vice versa;
 - (ii) a reference to a person includes a reference to a company or other legal entity;
 - (iii) if a word is defined, another part of speech has a corresponding meaning; and
 - (iv) a reference to AEST is a reference to Australian Eastern Standard Time (without regard to daylight saving or summer time).
- (d) We may assign our rights to receive amounts payable by you under this contract to our financier.

21.2 Our obligations

Some obligations placed on us under this contract may be carried out by another person. If an obligation is placed on us to do something under this contract, then:

- (a) we are taken to have complied with the obligation if another person does it on our behalf; and
- (b) if the obligation is not complied with, we are still liable to you for the failure to comply with this contract.

21.3 Amending this contract

- (a) We may make reasonable amendments to the terms of this contract.
- (b) We will provide you with at least 20 business days' notice of any amendments.

21.4 Definitions

business day means a day other than a Saturday, a Sunday or a public holiday in the place where your premises are located.

default interest rate means 2% plus the corporate overdraft reference rate (from time to time) quoted by the Commonwealth Bank of Australia (or if that reference rate does not exist, another similar rate determined by us). However, if a relevant law limits the rate we may charge for default interest, the default interest rate will be limited to that rate.

designated retailer means the retailer responsible for the supply of electricity to your premises under the electricity laws if a retailer of last resort event occurs.

disconnection means an action to prevent the flow of electricity to the premises, but does not include an interruption.

distributor means the person who operates the system that connects your premises to the electricity distribution network.

electricity laws means national and State and Territory laws and rules relating to electricity and the legal instruments made under those laws, including all relevant codes.

emergency means an emergency due to the actual or imminent occurrence of an event that in any way endangers or threatens to endanger the safety or health of any person, or normal operation of the distribution system or transmission system, or that destroys or damages, or threatens to destroy or damage, any property.

extreme weather event means an event declared by a local instrument as an extreme weather event in the jurisdiction in which the premises are located.

force majeure event means an event outside the control of a party.

GST has the meaning given in the GST Act (A New Tax System (Goods and Services Tax) Act 1999 (Cth)).

public holiday means a day that is observed as a local public holiday in the area in which the premises are located (including the whole of the State or Territory in which the area is located).

relevant authority means any person or body who has the power under law to direct us, including the Australian Energy Market Operator and State or Federal Police.

retailer means a person that is authorised to sell electricity to customers.

retailer of last resort event means an event that triggers the operation of a retailer of last resort scheme under the relevant electricity laws.